IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6276 of 2003
And
W.P.M.P. NO. 8194 of 2003

Between:
M/s/ Shivani Engineering Industries,
Rep.by its Managing Partner, Smt. K. Rama Devi,
W/o. Sri K. Muralidhar Rao, aged about 43 years,
R/o. Plot No.B-2/a, IDA, Uppal, R.R. District.

..... PETITIONER

AND

1.The Registrar of Co-operative Societies,
Nampally, Hyderabad.

2.M/s. Prudential Coop Bank Limited
8-1-381, R.P. Road, Secunderabad
rep. by its Assistant General Manager.

3. Union of India, represented by its Secretary,
Ministry of Law & Justice,
Sastry Bhavan, New Delhi

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus striking down the SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT 2002, in total and striking down Sections 13, 15 and 34 of the said Act and consequently set aside the impugned Notice dt. 14.2.2003 bearing No. PCB/RP/AR/ESI/4/2002-2003 issued by

the second respondent U/Sec. 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.

Counsel for the Petitioner: Mr. Kanakamedala Ravindra Kumar

Counsel for the Respondent No.1: The G.P. for Cooperation

Counsel for Respondent No.2: Mr. S. Ashok Ananad Kumar

Counsel for the respondent No.3 : Mr. A. Rajasekhara Reddy,

Standing Counsel for Central Govt.

AND

W.P.M.P. NO. 8194 OF 2003

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M/s/ Shivani Engineering Industries,
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3. Union of India, represented by its Secretary,
Ministry of Law & Justice,
Sastry Bhavan, New Delhi **.....RESPONDENT(S)**

Petition under Section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to suspend the operation of the impugned notice bearing No. PCB/RP/AR/ESI/14/2002-03, dt. 14.2.2003 issued by the 2nd respondent herein, pending disposal of the above writ petition.

Counsel for the Petitioner: Mr. Kanakamedala Ravindra Kumar

Counsel for the Respondent No.1: The G.P. for Cooperation

Counsel for Respondent No.2: Mr. S. Ashok Ananad Kumar

Counsel for the respondent No.3 : Mr. A. Rajasekhara Reddy,

Standing Counsel for Central Govt.

The Court Made the Following Oral Order:
(**per Hon'ble The Chief Justice)**

1. In view of the decision rendered by the Hon'ble Supreme Court in Transfer Case (Civil) No.92-95 of 2002, dated 8th April, 2004 [MARDIA CHEMICALS LTD v UNION OF INDIA & ORS] upholding the constitutional validity of the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, barring sub-section (2) of Section 17 of the Act, which was declared as ultra vires of Article 14 of the Constitution of India, this petition deserves to be decided in terms of the said decision. The Supreme Court in MARDIA CHEMICALS case has held that before taking action by the Bank under the provisions of the Act, a notice of 60 days is required to be given by the bank and after the measures under Section 13 (2) of the Act have been taken, mechanism has been provided under Section 17 of the Act to approach Debts Recovery Tribunal. Supreme Court has further held thus:

> "1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceedings to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the

notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.

2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

2. In view of the decision of the Supreme Court upholding constitutional validity of the offending provisions of the Act, we dismiss the writ petition thereby reserving liberty to the petitioner to work out his/its remedies as provided under the Act including filing of appeal under Section 17 of the Act within the period of limitation prescribed therefor, to be counted from today.

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3. In view of the dismissal of the writ petition, the interim directions stand vacated and the WPMP stands disposed of as such.

Dated: 16th June, 2004
pnb

ASSISTANT REGISTRAR

// TRUE COPY//

SECION OFFICER

To
1.The Registrar of Cooperative Societies,
Nampally, Hyderabad.

2.The Assistant General Manager,
M/s. Prudential Coop Bank Limited
8-1-381, R.P. Road, Secunderabad.

3. The Secretary, Union of India, Ministry of Law & Justice,
Sastry Bhavan, New Delhi

4.Two CCs to the Government Pleader for Cooperation, High Court Buildings, Hyderabad (OUT).

5. Two C.D. Copies

HON'BLE SRI DEVINDER GUPTA,
CHIEF JUSTICE
AND
HON'BLE MS. JUSTICE G.ROHINI.

W.P.NO. OF 2004.
AND
WPMP.NO. OF 2004.

(Order of the Bench delivered by
Hon'ble The Chief Justice)

Dt: 16.06.2004.